

AMENDMENTS TO LB 563

(Amendments to E & R amendments, ER8214)

Introduced by Lathrop, 12.

1           1. Strike the original sections and all amendments  
2 thereto and insert the following sections:

3           Section 1. Sections 1 to 12 of this act shall be known  
4 and may be cited as the Employee Classification Act.

5           Sec. 2. For purposes of the Employee Classification Act:

6           (1) Commissioner means the Commissioner of Labor;

7           (2) Construction has the same meaning as in section  
8 48-2103;

9           (3) Contractor means an individual, partnership, limited  
10 liability company, corporation, or other business entity engaged  
11 in a delivery service or a construction contractor business,  
12 as contractor is defined in section 48-2103, and includes any  
13 subcontractor performing services for a contractor;

14           (4) Delivery service means the transport and delivery of  
15 goods, products, supplies, or raw materials upon the highways of  
16 this state;

17           (5) Department means the Department of Labor; and

18           (6) Performing services means the performance of  
19 construction labor or delivery services for remuneration.

20           Sec. 3. (1) An individual performing construction labor  
21 services for a contractor is presumed an employee and not an  
22 independent contractor for purposes of the Employee Classification

1 Act, unless:

2 (a) The individual meets the criteria found in  
3 subdivision (5) of section 48-604;

4 (b) The individual has been registered as a contractor  
5 pursuant to the Contractor Registration Act at least six months  
6 prior to commencing construction work for the contractor; and

7 (c) The individual has been assigned a combined tax rate  
8 pursuant to subdivision (4) of section 48-649 or the employees of  
9 the individual are exempted from unemployment insurance coverage  
10 pursuant to subdivision (6) of section 48-604.

11 (2) An individual performing delivery services for  
12 a contractor is presumed an employee and not an independent  
13 contractor for purposes of the Employee Classification Act, unless  
14 the individual is exempted from unemployment insurance coverage  
15 pursuant to subdivision (6) of section 48-604.

16 (3) The Employee Classification Act shall not be  
17 construed to affect or apply to a common-law or statutory action  
18 providing for recovery in tort and shall not be construed to affect  
19 or change the common-law interpretation of independent contractor  
20 status as it relates to tort liability or a workers' compensation  
21 claim. The act shall also not be construed to affect or alter  
22 the use of the term independent contractor as interpreted by the  
23 Department of Revenue and shall not be construed to affect any  
24 action brought pursuant to the Nebraska Revenue Act of 1967.

25 Sec. 4. It is a violation of the Employee Classification  
26 Act for a contractor to designate an individual as an independent  
27 contractor who would be properly classified as an employee under

1 section 3 of this act.

2           Sec. 5. The department shall establish and operate a  
3 hotline and web site for individuals to report suspected violations  
4 of the Employee Classification Act. The hotline and web site may  
5 be operated in conjunction with the requirements of the Contractor  
6 Registration Act. At a minimum, the department shall require  
7 the reporting individual to provide contact information and a  
8 description of the suspected violation including the name of the  
9 business and jobsite location. Except to the extent needed in  
10 any administrative hearing, civil action, or criminal proceeding  
11 brought to enforce the Employment Security Law, Nebraska Revenue  
12 Act of 1967, or Nebraska Workers' Compensation Act, information  
13 obtained by the department under this section or obtained from  
14 any individual pursuant to the administration of the Employee  
15 Classification Act shall be held confidential.

16           Sec. 6. The department shall timely investigate all  
17 credible reports made pursuant to section 5 of this act.

18           Sec. 7. In addition to any other fines or penalties  
19 provided by law, if the commissioner finds, after notice and  
20 hearing, that a contractor has violated the Employee Classification  
21 Act, the contractor shall be assessed, by the commissioner, a  
22 five-hundred-dollar fine per each misclassified individual for  
23 the first offense and a five-thousand-dollar fine per each  
24 misclassified individual for each second and subsequent offense.

25           Sec. 8. Upon finding a contractor has violated the  
26 Employee Classification Act, the commissioner shall instigate  
27 proceedings pursuant to the Employment Security Law to collect

1 any unpaid combined taxes plus interest. The commissioner shall  
2 share any violations with the Department of Revenue for analysis  
3 of violations of the Nebraska Revenue Act of 1967 and with the  
4 Nebraska Workers' Compensation Court. Upon receipt, the Department  
5 of Revenue shall promptly investigate and, if appropriate, proceed  
6 with the collection of any income tax not withheld plus interest  
7 and penalties. The commissioner, Department of Revenue, and  
8 Nebraska Workers' Compensation Court shall refer any violation  
9 reasonably believed to be a civil or criminal violation of  
10 the Employment Security Law, the Nebraska Revenue Act of 1967,  
11 the Nebraska Workers' Compensation Act, or another law to the  
12 appropriate prosecuting authority for appropriate action.

13           Sec. 9. The department shall annually provide a report to  
14 the Legislature regarding compliance with and enforcement of the  
15 Employee Classification Act. The report shall include, but not be  
16 limited to, the number of reports received from both its hotline  
17 and web site, the number of investigated reports, the findings  
18 of the reports, the amount of combined tax, interest, and fines  
19 collected, the number of referrals to the Department of Revenue,  
20 Nebraska Workers' Compensation Court, and appropriate prosecuting  
21 authority, and the outcome of such referrals.

22           Sec. 10. Every contractor shall post in a conspicuous  
23 place at the job site or place of business in English and Spanish  
24 the following notice:

25           (1) Every individual working for a contractor has the  
26 right to be properly classified by the contractor as an employee  
27 rather than an independent contractor if the individual does not

1 meet the requirements of an independent contractor under the law  
2 known as the Employee Classification Act.

3 (2) If you believe you or someone else has not been  
4 properly classified as an employee or an independent contractor  
5 under the Employee Classification Act, contact the Department of  
6 Labor.

7 Sec. 11. Any contract between the state or a political  
8 subdivision and a contractor shall require that each contractor who  
9 performs construction or delivery service pursuant to the contract  
10 submit to the state or political subdivision an affidavit attesting  
11 that (1) each individual performing services for such contractor is  
12 properly classified under the Employee Classification Act, (2) such  
13 contractor has completed a federal I-9 immigration form and has  
14 such form on file for each employee performing services, (3) such  
15 contractor has complied with section 4-114, (4) such contractor  
16 has no reasonable basis to believe that any individual performing  
17 services for such contractor is an undocumented worker, and (5) as  
18 of the time of the contract, such contractor is not barred from  
19 contracting with the state or any political subdivision pursuant  
20 to section 12 of this act. Such contract shall also require that  
21 the contractor follow the provisions of the Employee Classification  
22 Act. A violation of the act by a contractor is grounds for  
23 rescission of the contract by the state or political subdivision.

24 Sec. 12. Any contractor who knowingly provides a false  
25 affidavit under section 11 of this act to the state or political  
26 subdivision shall be subject to the penalties of perjury and upon  
27 a second or subsequent violation shall be barred from contracting

1 with the state or any political subdivision for a period of three  
2 years after the date of discovery of the falsehood.

3           Sec. 13. Section 48-2115, Revised Statutes Supplement,  
4 2009, is amended to read:

5           48-2115 There is hereby created the Contractor  
6 Registration Cash Fund to be administered by the department and  
7 used to enforce the Contractor Registration Act and the Employee  
8 Classification Act. The fund shall consist of such sums as are  
9 appropriated to it by the Legislature and any fees collected in the  
10 administration of the ~~aet~~ acts that are to be credited to the fund.  
11 Any money in the fund available for investment shall be invested  
12 by the state investment officer pursuant to the Nebraska Capital  
13 Expansion Act and the Nebraska State Funds Investment Act.

14           Sec. 14. Section 77-2711, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           77-2711 (1)(a) The Tax Commissioner shall enforce  
17 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and  
18 enforce rules and regulations relating to the administration and  
19 enforcement of such sections.

20           (b) The Tax Commissioner may prescribe the extent to  
21 which any ruling or regulation shall be applied without retroactive  
22 effect.

23           (2) The Tax Commissioner may employ accountants,  
24 auditors, investigators, assistants, and clerks necessary for the  
25 efficient administration of the Nebraska Revenue Act of 1967 and  
26 may delegate authority to his or her representatives to conduct  
27 hearings, prescribe regulations, or perform any other duties

1 imposed by such act.

2 (3) (a) Every seller, every retailer, and every person  
3 storing, using, or otherwise consuming in this state property  
4 purchased from a retailer shall keep such records, receipts,  
5 invoices, and other pertinent papers in such form as the Tax  
6 Commissioner may reasonably require.

7 (b) Every such seller, retailer, or person shall keep  
8 such records for not less than three years from the making of such  
9 records unless the Tax Commissioner in writing sooner authorized  
10 their destruction.

11 (4) The Tax Commissioner or any person authorized in  
12 writing by him or her may examine the books, papers, records, and  
13 equipment of any person selling property and any person liable for  
14 the use tax and may investigate the character of the business of  
15 the person in order to verify the accuracy of any return made or,  
16 if no return is made by the person, to ascertain and determine  
17 the amount required to be paid. In the examination of any person  
18 selling property or of any person liable for the use tax, an  
19 inquiry shall be made as to the accuracy of the reporting of city  
20 sales and use taxes for which the person is liable under the Local  
21 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and  
22 the accuracy of the allocation made between the various counties,  
23 cities, villages, and municipal counties of the tax due. The Tax  
24 Commissioner may make or cause to be made copies of resale or  
25 exemption certificates and may pay a reasonable amount to the  
26 person having custody of the records for providing such copies.

27 (5) The taxpayer shall have the right to keep or store

1 his or her records at a point outside this state and shall make his  
2 or her records available to the Tax Commissioner at all times.

3 (6) In administration of the use tax, the Tax  
4 Commissioner may require the filing of reports by any person or  
5 class of persons having in his, her, or their possession or custody  
6 information relating to sales of property, the storage, use, or  
7 other consumption of which is subject to the tax. The report shall  
8 be filed when the Tax Commissioner requires and shall set forth the  
9 names and addresses of purchasers of the property, the sales price  
10 of the property, the date of sale, and such other information as  
11 the Tax Commissioner may require.

12 (7) It shall be a Class I misdemeanor for the Tax  
13 Commissioner or any official or employee of the Tax Commissioner,  
14 the State Treasurer, or the Department of Administrative Services  
15 to make known in any manner whatever the business affairs,  
16 operations, or information obtained by an investigation of records  
17 and activities of any retailer or any other person visited  
18 or examined in the discharge of official duty or the amount  
19 or source of income, profits, losses, expenditures, or any  
20 particular thereof, set forth or disclosed in any return, or  
21 to permit any return or copy thereof, or any book containing  
22 any abstract or particulars thereof to be seen or examined by  
23 any person not connected with the Tax Commissioner. Nothing in  
24 this section shall be construed to prohibit (a) the delivery to  
25 a taxpayer, his or her duly authorized representative, or his  
26 or her successors, receivers, trustees, executors, administrators,  
27 assignees, or guarantors, if directly interested, of a certified

1 copy of any return or report in connection with his or her tax,  
2 (b) the publication of statistics so classified as to prevent  
3 the identification of particular reports or returns and the items  
4 thereof, (c) the inspection by the Attorney General, other legal  
5 representative of the state, or county attorney of the reports  
6 or returns of any taxpayer when either (i) information on the  
7 reports or returns is considered by the Attorney General to be  
8 relevant to any action or proceeding instituted by the taxpayer  
9 or against whom an action or proceeding is being considered or  
10 has been commenced by any state agency or the county or (ii) the  
11 taxpayer has instituted an action to review the tax based thereon  
12 or an action or proceeding against the taxpayer for collection of  
13 tax or failure to comply with the Nebraska Revenue Act of 1967 is  
14 being considered or has been commenced, (d) the furnishing of any  
15 information to the United States Government or to states allowing  
16 similar privileges to the Tax Commissioner, (e) the disclosure of  
17 information and records to a collection agency contracting with the  
18 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)  
19 the disclosure to another party to a transaction of information  
20 and records concerning the transaction between the taxpayer and  
21 the other party, ~~or~~ (g) the disclosure of information pursuant to  
22 section 77-27,195 or 77-5731, or (h) the disclosure of information  
23 to the Department of Labor necessary for the administration of the  
24 Employment Security Law, the Contractor Registration Act, or the  
25 Employee Classification Act.

26 (8) Notwithstanding the provisions of subsection (7) of  
27 this section, the Tax Commissioner may permit the Postal Inspector

1 of the United States Postal Service or his or her delegates to  
2 inspect the reports or returns of any person filed pursuant to the  
3 Nebraska Revenue Act of 1967 when information on the reports or  
4 returns is relevant to any action or proceeding instituted or being  
5 considered by the United States Postal Service against such person  
6 for the fraudulent use of the mails to carry and deliver false and  
7 fraudulent tax returns to the Tax Commissioner with the intent to  
8 defraud the State of Nebraska or to evade the payment of Nebraska  
9 state taxes.

10 (9) Notwithstanding the provisions of subsection (7) of  
11 this section, the Tax Commissioner may permit other tax officials  
12 of this state to inspect the tax returns, reports, and applications  
13 filed under sections 77-2701.04 to 77-2713, but such inspection  
14 shall be permitted only for purposes of enforcing a tax law and  
15 only to the extent and under the conditions prescribed by the rules  
16 and regulations of the Tax Commissioner.

17 (10) Notwithstanding the provisions of subsection (7)  
18 of this section, the Tax Commissioner may, upon request, provide  
19 the county board of any county which has exercised the authority  
20 granted by section 81-1254 with a list of the names and addresses  
21 of the hotels located within the county for which lodging sales tax  
22 returns have been filed or for which lodging sales taxes have been  
23 remitted for the county's County Visitors Promotion Fund under the  
24 Nebraska Visitors Development Act.

25 The information provided by the Tax Commissioner shall  
26 indicate only the names and addresses of the hotels located within  
27 the requesting county for which lodging sales tax returns have been

1 filed for a specified period and the fact that lodging sales taxes  
2 remitted by or on behalf of the hotel have constituted a portion of  
3 the total sum remitted by the state to the county for a specified  
4 period under the provisions of the Nebraska Visitors Development  
5 Act. No additional information shall be revealed.

6 (11) (a) Notwithstanding the provisions of subsection (7)  
7 of this section, the Tax Commissioner shall, upon written request  
8 by the Auditor of Public Accounts or the Legislative Performance  
9 Audit Committee, make tax returns and tax return information open  
10 to inspection by or disclosure to Auditor of Public Accounts or  
11 Legislative Performance Audit Section employees for the purpose of  
12 and to the extent necessary in making an audit of the Department  
13 of Revenue pursuant to section 50-1205 or 84-304. Confidential  
14 tax returns and tax return information shall be audited only upon  
15 the premises of the Department of Revenue. All audit workpapers  
16 pertaining to the audit of the Department of Revenue shall be  
17 stored in a secure place in the Department of Revenue.

18 (b) No employee of the Auditor of Public Accounts or  
19 Legislative Performance Audit Section shall disclose to any person,  
20 other than another Auditor of Public Accounts or Legislative  
21 Performance Audit Section employee whose official duties require  
22 such disclosure or as provided in subsections (2) and (3) of  
23 section 50-1213, any return or return information described in the  
24 Nebraska Revenue Act of 1967 in a form which can be associated  
25 with or otherwise identify, directly or indirectly, a particular  
26 taxpayer.

27 (c) Any person who violates the provisions of this

1 subsection shall be guilty of a Class I misdemeanor. For purposes  
2 of this subsection, employee includes a former Auditor of Public  
3 Accounts or Legislative Performance Audit Section employee.

4 (12) For purposes of this subsection and subsection (11)  
5 of this section:

6 (a) Disclosure means the making known to any person in  
7 any manner a tax return or return information;

8 (b) Return information means:

9 (i) A taxpayer's identification number and (A) the  
10 nature, source, or amount of his or her income, payments, receipts,  
11 deductions, exemptions, credits, assets, liabilities, net worth,  
12 tax liability, tax withheld, deficiencies, overassessments, or tax  
13 payments, whether the taxpayer's return was, is being, or will be  
14 examined or subject to other investigation or processing or (B) any  
15 other data received by, recorded by, prepared by, furnished to, or  
16 collected by the Tax Commissioner with respect to a return or the  
17 determination of the existence or possible existence of liability  
18 or the amount of liability of any person for any tax, penalty,  
19 interest, fine, forfeiture, or other imposition or offense; and

20 (ii) Any part of any written determination or any  
21 background file document relating to such written determination;  
22 and

23 (c) Tax return or return means any tax or information  
24 return or claim for refund required by, provided for, or permitted  
25 under sections 77-2701 to 77-2713 which is filed with the Tax  
26 Commissioner by, on behalf of, or with respect to any person  
27 and any amendment or supplement thereto, including supporting

1 schedules, attachments, or lists which are supplemental to or part  
2 of the filed return.

3 (13) Notwithstanding the provisions of subsection (7) of  
4 this section, the Tax Commissioner shall, upon request, provide any  
5 municipality which has adopted the local option sales tax under the  
6 Local Option Revenue Act with a list of the names and addresses  
7 of the retailers which have collected the local option sales tax  
8 for the municipality. The request may be made annually and shall  
9 be submitted to the Tax Commissioner on or before June 30 of  
10 each year. The information provided by the Tax Commissioner shall  
11 indicate only the names and addresses of the retailers. The Tax  
12 Commissioner may provide additional information to a municipality  
13 so long as the information does not include any data detailing  
14 the specific revenue, expenses, or operations of any particular  
15 business.

16 (14) In all proceedings under the Nebraska Revenue Act  
17 of 1967, the Tax Commissioner may act for and on behalf of the  
18 people of the State of Nebraska. The Tax Commissioner in his or her  
19 discretion may waive all or part of any penalties provided by the  
20 provisions of such act or interest on delinquent taxes specified in  
21 section 45-104.02, as such rate may from time to time be adjusted.

22 (15) (a) The purpose of this subsection is to set forth  
23 the state's policy for the protection of the confidentiality  
24 rights of all participants in the system operated pursuant to  
25 the streamlined sales and use tax agreement and of the privacy  
26 interests of consumers who deal with model 1 sellers.

27 (b) For purposes of this subsection:

1           (i) Anonymous data means information that does not  
2 identify a person;

3           (ii) Confidential taxpayer information means all  
4 information that is protected under a member state's laws,  
5 regulations, and privileges; and

6           (iii) Personally identifiable information means  
7 information that identifies a person.

8           (c) The state agrees that a fundamental precept for model  
9 1 sellers is to preserve the privacy of consumers by protecting  
10 their anonymity. With very limited exceptions, a certified service  
11 provider shall perform its tax calculation, remittance, and  
12 reporting functions without retaining the personally identifiable  
13 information of consumers.

14           (d) The governing board of the member states in the  
15 streamlined sales and use tax agreement may certify a certified  
16 service provider only if that certified service provider certifies  
17 that:

18           (i) Its system has been designed and tested to ensure  
19 that the fundamental precept of anonymity is respected;

20           (ii) Personally identifiable information is only used and  
21 retained to the extent necessary for the administration of model 1  
22 with respect to exempt purchasers;

23           (iii) It provides consumers clear and conspicuous  
24 notice of its information practices, including what information  
25 it collects, how it collects the information, how it uses the  
26 information, how long, if at all, it retains the information, and  
27 whether it discloses the information to member states. Such notice

1 shall be satisfied by a written privacy policy statement accessible  
2 by the public on the web site of the certified service provider;

3 (iv) Its collection, use, and retention of personally  
4 identifiable information is limited to that required by the member  
5 states to ensure the validity of exemptions from taxation that are  
6 claimed by reason of a consumer's status or the intended use of the  
7 goods or services purchased; and

8 (v) It provides adequate technical, physical, and  
9 administrative safeguards so as to protect personally identifiable  
10 information from unauthorized access and disclosure.

11 (e) The state shall provide public notification to  
12 consumers, including exempt purchasers, of the state's practices  
13 relating to the collection, use, and retention of personally  
14 identifiable information.

15 (f) When any personally identifiable information that  
16 has been collected and retained is no longer required for the  
17 purposes set forth in subdivision (15)(d)(iv) of this section, such  
18 information shall no longer be retained by the member states.

19 (g) When personally identifiable information regarding an  
20 individual is retained by or on behalf of the state, it shall  
21 provide reasonable access by such individual to his or her own  
22 information in the state's possession and a right to correct any  
23 inaccurately recorded information.

24 (h) If anyone other than a member state, or a person  
25 authorized by that state's law or the agreement, seeks to discover  
26 personally identifiable information, the state from whom the  
27 information is sought should make a reasonable and timely effort to

1 notify the individual of such request.

2 (i) This privacy policy is subject to enforcement by the  
3 Attorney General.

4 (j) All other laws and regulations regarding the  
5 collection, use, and maintenance of confidential taxpayer  
6 information remain fully applicable and binding. Without  
7 limitation, this subsection does not enlarge or limit the state's  
8 authority to:

9 (i) Conduct audits or other reviews as provided under the  
10 agreement and state law;

11 (ii) Provide records pursuant to the federal Freedom of  
12 Information Act, disclosure laws with governmental agencies, or  
13 other regulations;

14 (iii) Prevent, consistent with state law, disclosure of  
15 confidential taxpayer information;

16 (iv) Prevent, consistent with federal law, disclosure or  
17 misuse of federal return information obtained under a disclosure  
18 agreement with the Internal Revenue Service; and

19 (v) Collect, disclose, disseminate, or otherwise use  
20 anonymous data for governmental purposes.

21 Sec. 15. Section 77-27,119, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 77-27,119 (1) The Tax Commissioner shall administer and  
24 enforce the income tax imposed by sections 77-2714 to 77-27,135,  
25 and he or she is authorized to conduct hearings, to adopt and  
26 promulgate such rules and regulations, and to require such facts  
27 and information to be reported as he or she may deem necessary to

1 enforce the income tax provisions of such sections, except that  
2 such rules, regulations, and reports shall not be inconsistent with  
3 the laws of this state or the laws of the United States. The Tax  
4 Commissioner may for enforcement and administrative purposes divide  
5 the state into a reasonable number of districts in which branch  
6 offices may be maintained.

7 (2) (a) The Tax Commissioner may prescribe the form and  
8 contents of any return or other document required to be filed under  
9 the income tax provisions. Such return or other document shall  
10 be compatible as to form and content with the return or document  
11 required by the laws of the United States. The form shall have a  
12 place where the taxpayer shall designate the high school district  
13 in which he or she lives and the county in which the high school  
14 district is headquartered. The Tax Commissioner shall adopt and  
15 promulgate such rules and regulations as may be necessary to insure  
16 compliance with this requirement.

17 (b) The State Department of Education, with the  
18 assistance and cooperation of the Department of Revenue, shall  
19 develop a uniform system for numbering all school districts in the  
20 state. Such system shall be consistent with the data processing  
21 needs of the Department of Revenue and shall be used for the  
22 school district identification required by subdivision (a) of this  
23 subsection.

24 (c) The proper filing of an income tax return shall  
25 consist of the submission of such form as prescribed by the  
26 Tax Commissioner or an exact facsimile thereof with sufficient  
27 information provided by the taxpayer on the face of the form from

1 which to compute the actual tax liability. Each taxpayer shall  
2 include such taxpayer's correct social security number or state  
3 identification number and the school district identification number  
4 of the school district in which the taxpayer resides on the face of  
5 the form. A filing is deemed to occur when the required information  
6 is provided.

7 (3) The Tax Commissioner, for the purpose of ascertaining  
8 the correctness of any return or other document required to  
9 be filed under the income tax provisions, for the purpose of  
10 determining corporate income, individual income, and withholding  
11 tax due, or for the purpose of making an estimate of taxable income  
12 of any person, shall have the power to examine or to cause to have  
13 examined, by any agent or representative designated by him or her  
14 for that purpose, any books, papers, records, or memoranda bearing  
15 upon such matters and may by summons require the attendance of  
16 the person responsible for rendering such return or other document  
17 or remitting any tax, or any officer or employee of such person,  
18 or the attendance of any other person having knowledge in the  
19 premises, and may take testimony and require proof material for his  
20 or her information, with power to administer oaths or affirmations  
21 to such person or persons.

22 (4) The time and place of examination pursuant to this  
23 section shall be such time and place as may be fixed by the Tax  
24 Commissioner and as are reasonable under the circumstances. In the  
25 case of a summons, the date fixed for appearance before the Tax  
26 Commissioner shall not be less than twenty days from the time of  
27 service of the summons.

1           (5) No taxpayer shall be subjected to unreasonable or  
2 unnecessary examinations or investigations.

3           (6) Except in accordance with proper judicial order or  
4 as otherwise provided by law, it shall be unlawful for the Tax  
5 Commissioner, any officer or employee of the Tax Commissioner,  
6 any person engaged or retained by the Tax Commissioner on an  
7 independent contract basis, any person who pursuant to this section  
8 is permitted to inspect any report or return or to whom a copy, an  
9 abstract, or a portion of any report or return is furnished, any  
10 employee of the State Treasurer or the Department of Administrative  
11 Services, or any other person to divulge, make known, or use in  
12 any manner the amount of income or any particulars set forth or  
13 disclosed in any report or return required except for the purpose  
14 of enforcing sections 77-2714 to 77-27,135. The officers charged  
15 with the custody of such reports and returns shall not be required  
16 to produce any of them or evidence of anything contained in them  
17 in any action or proceeding in any court, except on behalf of the  
18 Tax Commissioner in an action or proceeding under the provisions  
19 of the tax law to which he or she is a party or on behalf of  
20 any party to any action or proceeding under such sections when the  
21 reports or facts shown thereby are directly involved in such action  
22 or proceeding, in either of which events the court may require the  
23 production of, and may admit in evidence, so much of such reports  
24 or of the facts shown thereby as are pertinent to the action or  
25 proceeding and no more. Nothing in this section shall be construed  
26 (a) to prohibit the delivery to a taxpayer, his or her duly  
27 authorized representative, or his or her successors, receivers,

1 trustees, personal representatives, administrators, assignees, or  
2 guarantors, if directly interested, of a certified copy of any  
3 return or report in connection with his or her tax, (b) to  
4 prohibit the publication of statistics so classified as to prevent  
5 the identification of particular reports or returns and the items  
6 thereof, (c) to prohibit the inspection by the Attorney General,  
7 other legal representatives of the state, or a county attorney  
8 of the report or return of any taxpayer who brings an action to  
9 review the tax based thereon, against whom an action or proceeding  
10 for collection of tax has been instituted, or against whom an  
11 action, proceeding, or prosecution for failure to comply with the  
12 Nebraska Revenue Act of 1967 is being considered or has been  
13 commenced, (d) to prohibit furnishing to the Nebraska Workers'  
14 Compensation Court the names, addresses, and identification numbers  
15 of employers, and such information shall be furnished on request  
16 of the court, (e) to prohibit the disclosure of information  
17 and records to a collection agency contracting with the Tax  
18 Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)  
19 to prohibit the disclosure of information pursuant to section  
20 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure  
21 to the Public Employees Retirement Board of the addresses of  
22 individuals who are members of the retirement systems administered  
23 by the board, and such information shall be furnished to the  
24 board solely for purposes of its administration of the retirement  
25 systems upon written request, which request shall include the name  
26 and social security number of each individual for whom an address  
27 is requested, (h) ~~to prohibit the disclosure to the Department~~

1 of Labor of tax return information pertaining to individuals,  
2 corporations, and businesses determined by the Department of Labor  
3 to be delinquent in the payment of combined tax or in the repayment  
4 of benefit overpayments, and such disclosure shall be strictly  
5 limited to information necessary for the administration of the  
6 Employment Security Law, to prohibit the disclosure of information  
7 to the Department of Labor necessary for the administration of  
8 the Employment Security Law, the Contractor Registration Act, or  
9 the Employee Classification Act, (i) to prohibit the disclosure  
10 to the Department of Motor Vehicles of tax return information  
11 pertaining to individuals, corporations, and businesses determined  
12 by the Department of Motor Vehicles to be delinquent in the payment  
13 of amounts due under agreements pursuant to the International Fuel  
14 Tax Agreement Act, and such disclosure shall be strictly limited  
15 to information necessary for the administration of the act, or (j)  
16 to prohibit the disclosure under section 42-358.08, 43-512.06, or  
17 43-3327 to any court-appointed individuals, the county attorney,  
18 any authorized attorney, or the Department of Health and Human  
19 Services of an absent parent's address, social security number,  
20 amount of income, health insurance information, and employer's  
21 name and address for the exclusive purpose of establishing and  
22 collecting child, spousal, or medical support. Information so  
23 obtained shall be used for no other purpose. Any person who  
24 violates this subsection shall be guilty of a felony and shall upon  
25 conviction thereof be fined not less than one hundred dollars nor  
26 more than five hundred dollars, or be imprisoned not more than five  
27 years, or be both so fined and imprisoned, in the discretion of

1 the court and shall be assessed the costs of prosecution. If the  
2 offender is an officer or employee of the state, he or she shall be  
3 dismissed from office and be ineligible to hold any public office  
4 in this state for a period of two years thereafter.

5 (7) Reports and returns required to be filed under income  
6 tax provisions of sections 77-2714 to 77-27,135 shall be preserved  
7 until the Tax Commissioner orders them to be destroyed.

8 (8) Notwithstanding the provisions of subsection (6) of  
9 this section, the Tax Commissioner may permit the Secretary of the  
10 Treasury of the United States or his or her delegates or the proper  
11 officer of any state imposing an income tax, or the authorized  
12 representative of either such officer, to inspect the income tax  
13 returns of any taxpayer or may furnish to such officer or his or  
14 her authorized representative an abstract of the return of income  
15 of any taxpayer or supply him or her with information concerning an  
16 item of income contained in any return or disclosed by the report  
17 of any investigation of the income or return of income of any  
18 taxpayer, but such permission shall be granted only if the statutes  
19 of the United States or of such other state, as the case may be,  
20 grant substantially similar privileges to the Tax Commissioner of  
21 this state as the officer charged with the administration of the  
22 income tax imposed by sections 77-2714 to 77-27,135.

23 (9) Notwithstanding the provisions of subsection (6) of  
24 this section, the Tax Commissioner may permit the Postal Inspector  
25 of the United States Postal Service or his or her delegates to  
26 inspect the reports or returns of any person filed pursuant to the  
27 Nebraska Revenue Act of 1967 when information on the reports or

1 returns is relevant to any action or proceeding instituted or being  
2 considered by the United States Postal Service against such person  
3 for the fraudulent use of the mails to carry and deliver false and  
4 fraudulent tax returns to the Tax Commissioner with the intent to  
5 defraud the State of Nebraska or to evade the payment of Nebraska  
6 state taxes.

7 (10) (a) Notwithstanding the provisions of subsection (6)  
8 of this section, the Tax Commissioner shall, upon written request  
9 by the Auditor of Public Accounts or the Legislative Performance  
10 Audit Committee, make tax returns and tax return information  
11 open to inspection by or disclosure to officers and employees  
12 of the Auditor of Public Accounts or Legislative Performance  
13 Audit Section employees for the purpose of and to the extent  
14 necessary in making an audit of the Department of Revenue pursuant  
15 to section 50-1205 or 84-304. The Auditor of Public Accounts  
16 or Legislative Performance Audit Section shall statistically and  
17 randomly select the tax returns and tax return information to  
18 be audited based upon a computer tape provided by the Department  
19 of Revenue which contains only total population documents without  
20 specific identification of taxpayers. The Tax Commissioner shall  
21 have the authority to approve the statistical sampling method used  
22 by the Auditor of Public Accounts or Legislative Performance Audit  
23 Section. Confidential tax returns and tax return information shall  
24 be audited only upon the premises of the Department of Revenue.  
25 All audit workpapers pertaining to the audit of the Department of  
26 Revenue shall be stored in a secure place in the Department of  
27 Revenue.

1           (b) No officer or employee of the Auditor of Public  
2 Accounts or Legislative Performance Audit Section employee shall  
3 disclose to any person, other than another officer or employee of  
4 the Auditor of Public Accounts or Legislative Performance Audit  
5 Section employee whose official duties require such disclosure or  
6 as provided in subsections (2) and (3) of section 50-1213, any  
7 return or return information described in the Nebraska Revenue  
8 Act of 1967 in a form which can be associated with or otherwise  
9 identify, directly or indirectly, a particular taxpayer.

10           (c) Any person who violates the provisions of this  
11 subsection shall be guilty of a Class IV felony and, in the  
12 discretion of the court, may be assessed the costs of prosecution.  
13 The guilty officer or employee shall be dismissed from employment  
14 and be ineligible to hold any position of employment with the State  
15 of Nebraska for a period of two years thereafter. For purposes of  
16 this subsection, officer or employee shall include a former officer  
17 or employee of the Auditor of Public Accounts or former Legislative  
18 Performance Audit Section employee.

19           (11) For purposes of subsections (10) through (13) of  
20 this section:

21           (a) Tax returns shall mean any tax or information return  
22 or claim for refund required by, provided for, or permitted  
23 under sections 77-2714 to 77-27,135 which is filed with the Tax  
24 Commissioner by, on behalf of, or with respect to any person  
25 and any amendment or supplement thereto, including supporting  
26 schedules, attachments, or lists which are supplemental to or part  
27 of the filed return;

1 (b) Return information shall mean:

2 (i) A taxpayer's identification number and (A) the  
3 nature, source, or amount of his or her income, payments, receipts,  
4 deductions, exemptions, credits, assets, liabilities, net worth,  
5 tax liability, tax withheld, deficiencies, overassessments, or tax  
6 payments, whether the taxpayer's return was, is being, or will be  
7 examined or subject to other investigation or processing or (B) any  
8 other data received by, recorded by, prepared by, furnished to, or  
9 collected by the Tax Commissioner with respect to a return or the  
10 determination of the existence or possible existence of liability  
11 or the amount of liability of any person for any tax, penalty,  
12 interest, fine, forfeiture, or other imposition or offense; and

13 (ii) Any part of any written determination or any  
14 background file document relating to such written determination;  
15 and

16 (c) Disclosures shall mean the making known to any person  
17 in any manner a return or return information.

18 (12) The Auditor of Public Accounts or the Legislative  
19 Auditor of the Legislative Performance Audit Section shall (a)  
20 notify the Tax Commissioner in writing thirty days prior to the  
21 beginning of an audit of his or her intent to conduct an audit, (b)  
22 provide an audit plan, and (c) provide a list of the tax returns  
23 and tax return information identified for inspection during the  
24 audit.

25 (13) The Auditor of Public Accounts or the Legislative  
26 Performance Audit Section shall, as a condition for receiving tax  
27 returns and tax return information: (a) Subject employees involved

1 in the audit to the same confidential information safeguards  
2 and disclosure procedures as required of Department of Revenue  
3 employees; (b) establish and maintain a permanent system of  
4 standardized records with respect to any request for tax returns  
5 or tax return information, the reason for such request, and the  
6 date of such request and any disclosure of the tax return or  
7 tax return information; (c) establish and maintain a secure area  
8 or place in the Department of Revenue in which the tax returns,  
9 tax return information, or audit workpapers shall be stored; (d)  
10 restrict access to the tax returns or tax return information only  
11 to persons whose duties or responsibilities require access; (e)  
12 provide such other safeguards as the Tax Commissioner determines  
13 to be necessary or appropriate to protect the confidentiality of  
14 the tax returns or tax return information; (f) provide a report  
15 to the Tax Commissioner which describes the procedures established  
16 and utilized by the Auditor of Public Accounts or Legislative  
17 Performance Audit Section for insuring the confidentiality of tax  
18 returns, tax return information, and audit workpapers; and (g) upon  
19 completion of use of such returns or tax return information, return  
20 to the Tax Commissioner such returns or tax return information,  
21 along with any copies.

22 (14) The Tax Commissioner may permit other tax officials  
23 of this state to inspect the tax returns and reports filed  
24 under sections 77-2714 to 77-27,135, but such inspection shall be  
25 permitted only for purposes of enforcing a tax law and only to  
26 the extent and under the conditions prescribed by the rules and  
27 regulations of the Tax Commissioner.

1                   (15) The Tax Commissioner shall compile the school  
2 district information required by subsection (2) of this section.  
3 Insofar as it is possible, such compilation shall include, but  
4 not be limited to, the total adjusted gross income of each school  
5 district in the state. The Tax Commissioner shall adopt and  
6 promulgate such rules and regulations as may be necessary to insure  
7 that such compilation does not violate the confidentiality of any  
8 individual income tax return nor conflict with any other provisions  
9 of state or federal law.

10                   Sec. 16. Original sections 77-2711 and 77-27,119, Reissue  
11 Revised Statutes of Nebraska, and section 48-2115, Revised Statutes  
12 Supplement, 2009, are repealed.